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No. 84-1070

Office • Supreme Court, U.S.

FILED

JUN 6 1985

ALEXANDER L. STEVENS

CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1984

LARRY WITTERS,

Petitioner,

v.

STATE OF WASHINGTON

DEPARTMENT OF SERVICES FOR THE BLIND,

Respondent.

On Writ Of Certiorari From The
Supreme Court of the State of Washington

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI
FILED JANUARY 2, 1985
CERTIORARI GRANTED APRIL 1, 1985

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¹The Findings of Fact and Conclusions of Law contained in the Petition for Certiorari were a preliminary copy. The final copy entered by the Superior Court contained minor modifications. We therefore include the correct version herein.

STATE OF WASHINGTON
Dixy Lee Ray, Governor
COMMISSION FOR THE BLIND
3411 South Alaska Street
P.O. Box 18379, Seattle, Washington

March 11, 1980

Michael P. Farris, Attorney at Law
North 2610 Pines Road
Spokane, Washington 99206

RE: Larry Witters

Dear Mr. Farris:

This will confirm our meeting on Thursday afternoon, March 6. At that time I held an administrative review of this agency's decision regarding financial assistance for Mr. Witters to attend a Bible college to pursue a course in "pastoral studies."

As I mentioned to you at that time, the Washington State constitution states that no public money or property shall be appropriated for, or applied to, any religious worship, exercise, or instructions. Legislative enactment in 1971 of RCW Sec. 28B.10.830 through 28B.10.836 deals further with this subject and states that "No aid shall be awarded to any student who is pursuing a degree in theology."

While you maintain that Mr. Witters is not pursuing a degree in "theology" but rather in "pastoral studies," I do believe that by whatever name the proposed training must be considered religious instruction. In Mr. Witters' own words he states that his goal is to be "a minister of a local church." As such, I must reaffirm the decision of this agency in denying financial participation toward pursuit of this vocational goal.

If Mr. Witters finds this decision unsatisfactory he may request from the Commission, and will thereupon be

granted, a fair hearing pursuant to chapter 74.16 RCW. A client who desires a fair hearing must request such hearing within thirty days after receiving notice from the Commission of the findings of the administrative review. A fair hearing will be provided by the director of the Washington State Commission for the Blind, or his designee, and will be held within fifteen working days after the submission of the request. The fair hearing will be held in the county in which the client resides or in a mutually agreeable location. A copy of the Right of Appeal for clients is enclosed as is the policy on administrative reviews and fair hearings.

Sincerely,

/s/ Bill Gannon

BILL GANNON

Assistant Director

WEG:na

Encl.

cc: Larry Witters

Clarence Hall

Ken Hopkins, Director

WASHINGTON STATE COMMISSION FOR THE BLIND POLICY

VOCATIONAL REHABILITATION SERVICES FOR INDIVIDUALS—VOCATIONAL AND OTHER TRAINING SERVICES, INCLUDING PERSONAL AND VOCATIONAL ADJUSTMENT, BOOKS, TOOLS AND OTHER TRAINING MATERIALS

1. Personal adjustment services: The Commission will operate and maintain an Orientation Center for the adult blind of the State for those persons for whom it is determined that the Orientation Center is the most suitable resource for prevocational or adjustment training. The primary focus of this Center will be to develop proper attitudes about blindness in the student. Hand-in-hand with this emphasis will be training in such skill areas as the long cane method of travel, braille, typing, home economics, industrial arts, sewing and abacus. Essential to the student's development will be an understanding of the social attitudes about blindness and awareness of how to cope with problems which will arise by reason of the negative social attitudes about blind individuals.

Alternative training in the areas described above is also available through the Commission's rehabilitation teacher service for those persons who do not attend the Orientation Center.

2. Vocational training: The Commission will provide, assist in providing, or cause to be provided such vocational training for each individual as agreed upon by the client AND counselor with supervisory approval as necessary in order to achieve optimum vocational success. Vocational training includes academic, vocational, or technical pursuits, and on-the-job training in the areas of public and private employment. Training or training services in institutions of higher education (universities, colleges, community/junior colleges) shall not be paid for

with rehabilitation funds unless maximum efforts have been made by the Commission to secure student assistance in whole or in part from other sources to pay for such training or training services. The use of similar benefits in institutions of higher learning is mandated by federal rules and regulations governing the Rehabilitation Act of 1973, as amended, (section 1361.45(b)).

3. Books, tools, and other training materials: When necessary during the course of vocational training, the Commission will provide, assist in providing, or cause to be provided books, tools and other training materials. Again, specific items to be provided shall be agreed upon in joint planning between the counselor AND the client with supervisory approval. The amount and type of materials required will, of course, be dependent upon the course of study which is being pursued, but may include tape recorders, tapes, typewriters, braillewriters, and other specialized aids and devices *essential* to successful performance.

4. Private institutions or out-of-state institutions: The Washington State constitution forbids the use of public funds to assist an individual in the pursuit of a career or degree in theology or related areas.

Individuals may attend private institutions or out-of-state institutions of higher learning in pursuit of a vocational goal; however, the financial assistance available to any such individual is limited by that amount available to the same individual if education were pursued in a public institution within the state unless the private institution or out-of-state institution provides the only access to the achievement of the individual's vocational goal.

5. Graduate study: The Commission for the Blind will provide, assist in providing, or cause to be provided financial assistance in pursuit of post-graduate degrees when

such degree is clearly necessary to achieve employment in a given field, i.e., veterinary science. However, graduate programs to enhance employment opportunity or to achieve upward mobility within an employment setting could be pursued in the same manner as by the general public. The Commission will, of course, assist the individual in seeking out similar benefits should she/he desire to pursue a program in graduate study.

4/79 (replaces 5/78)

STATE OF WASHINGTON,
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
OFFICE OF HEARINGS

In Re: LARRY WITTERS, *Appellant*.

Docket No. 0480A-237

PETITIONER'S PROPOSED FACTUAL STIPULATION

Larry Witters is medically eligible for Commission for the Blind vocational rehabilitation funding. He is attending Inland Empire School of the Bible in pursuit of a career goal to become a pastor, missionary or Christian educator.

His classwork consists of classes instructional in nature for which he pays tuition. There are also devotional chapel services at the school for which he pays nothing.

At an earlier informal administrative hearing, the Deputy Director for the Commission admitted that its policy was such that the State would pay for Larry Witters training if he wanted to be a Communist agitator if there was a job available after such training, but that payments to train him to be a pastor were illegal.

DATED: Aug. 21, 1980.

Presented by: Moral Majority of Washington
Legal Foundation

By: /s/ Michael P. Farris
MICHAEL P. FARRIS
General Counsel

Approved: /s/ Ernest Furnia
ERNEST FURNIA
Assistant Attorney General
Department of Social Health Services

FILED 82 MAY 26 — A 8:32

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

NO. 80-2-04706-4

LARRY WITTERS, *Plaintiff*,

v.

STATE OF WASHINGTON
COMMISSION FOR THE BLIND, *Defendant*.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS CAUSE coming on regularly for hearing before this court on December 11, 1981, plaintiff being represented by his attorney, MICHAEL P. FARRIS, the defendant appearing by and through its attorneys, KENNETH O. EIKENBERRY, Attorney General, and ERNEST M. FURNIA, Assistant Attorney General, and the court having heard and considered the evidence of and on behalf of the parties and being fully advised in the premises, makes the following:

FINDINGS OF FACT

1) That plaintiff Larry Witters has met and does meet the medical and physical eligibility requirements specified under Chapter 74.16 of RCW for status as a legally blind person qualifying him to receive educational assistance.

2) That the program by the Commission for the Blind is publicly funded by a combination of approximately 80% federal funds and 20% state funds.

3) That plaintiff Witters was, at the time of the original hearing, enrolled as a student in the Inland Empire Bible School in Spokane, Washington.

4) That the Inland Empire Bible School is a private institution supported by private donations and tuition payments by students who attend that particular institution and is managed by a Board of Directors.

5) That the Inland Empire Bible School provides a Christian Education on a nondenominational basis offering a one-year Bible certificate, a three-year Bible diploma and a four-year Bachelor of Arts Degree.

6) That plaintiff Witters was originally pursuing a three-year Bible diploma course of study in order to equip himself for a position as a pastor, missionary or youth director, and is presently participating in the four-year program for the same vocational purpose.

7) That the curriculum for such a course of pastoral study included old and new testament studies, ethics, speech, and church administration.

8) That a policy statement for the Washington State Commission for the Blind established by the Commission states: "Private institutions or out-of-state institutions: The Washington State Constitution forbids the use of public funds to assist an individual in the pursuit of a career or degree in theology or related areas."

9) That plaintiff Witters was denied Vocational Rehabilitation funds by the Washington State Commission for the Blind upon grounds for disqualification found in said policy statement which deals solely with career choice or vocational objective.

From the foregoing Findings of Fact, the court makes the following:

CONCLUSIONS OF LAW

1) That the objective and purpose of RCW 74.16 is to create the Commission for the Blind as a Washington

State Commission and that RCW 74.16.181(3) specifically allows said Commission to provide for special education or training in business, professions or trade and to provide the payment of certain funds for such.

2) That RCW 74.16.450 empowers this Commission, through the director, to serve as the sole agency of the state in preparing, adopting and certifying state plans, rules, and regulations for the blind and visually handicapped as set forth in this chapter and to seek federal funds for the same.

3) That Article IX, Section 4, and Article 1, Section 11, of the Washington State Constitution direct that no public funds be used or maintained to support any school which is under sectarian control or influence and that school systems are to be maintained free from sectarian control.

4) That the Washington State Supreme Court in issues dealing with religion and religious affiliation has determined that public funds are not to become involved in the practice of religion or the fostering of religious education.

5) That the Commission has the right, under its authority to make rules, regulations and plans to consider certain constitutional and statutory inhibitions in the application of its funding powers.

6) That the policy established by the Commission, of not providing public funds for a degree in theology or related areas is applied and enforced uniformly to the particular relevant group of people, the visually handicapped, and thus there is no denial of equal protection to that restricted group.

7) That the Commission was correct in the application of its funding powers in determining that the use of public

funds, directly or indirectly, may not be provided to assist plaintiff in the pursuit of this specific course of study, career or degree in theology or related areas.

DONE IN OPEN COURT this 26th day of May, 1982.

/s/ Marcus M. Kelly, Judge
MARCUS M. KELLY

Presented by:

/s/ Michael P. Farris
MICHAEL P. FARRIS
Attorney for Plaintiff

Approved as to Form and
Presentation Waived:

/s/ David R. Minikel
DAVID R. MINIKEL
Assistant Attorney General
Attorney for Defendant

THE FOREGOING INSTRUMENT IS A CORRECT
COPY OF THE ORIGINAL AS THE SAME APPEARS
OF RECORD. ATTEST MAY 26TH, 1982

THOMAS R. FALLQUIST
County Clerk and Clerk of
the Superior Court in and
for the County of Spokane
State of Washington.

BY /s/ Manby J. Fligh
MANBY J. FLIGH, DEPUTY